STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Cooper, PJ, and Sawyer and Owens, JJ

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.
_____/

Supreme Court No. 120410

Court of Appeals No. 218433

Wayne County Circuit Court
Case No. 98-839763-CK
Hon. Kathleen MacDonald

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.
_____/

Supreme Court No. 120411

Court of Appeals No. 229448

Court of Claims
Case No. 99-17226-CM-C30
Hon. Lawrence Glazer

BRIEF ON APPEAL – APPELLEE

Oral Argument Requested

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Jurisdictional Statement

Appellant MSHDA's jurisdictional statement is complete and correct except that the date of the court of claims order is August 14, 2000. Appendix at 96a. The court of claims clerk docketed the order on August 15, 2000. Appendix at 12a, docket entry 121. This does not affect jurisdiction, since appellee Parkwood's August 28, 2000 claim of appeal (appendix at 23a, docket entry 1) was timely.

Counter-Statement of Question Involved

Is a complaint seeking only a declaratory judgment against a state agency, without any claim for money damages, within the jurisdiction of the circuit court and not within the exclusive jurisdiction of the court of claims?

The court of appeals answered "yes."

Appellee Parkwood answers "yes."

Summary of Argument

Two sections of the court of claims act define that court's jurisdiction over claims against the state and its agencies.

First, there is exclusive jurisdiction in the court of claims over "claims and demands . . . ex contractu." MCL 600.6419(1)(a). This jurisdiction "shall not deprive the circuit court of this state of jurisdiction over . . . proceedings for declaratory or equitable relief . . . ." MCL 600.6419(4).

Second, "[i]n addition to" the jurisdiction under section 6419, the act gives the court of claims jurisdiction concurrent with the circuit court over equitable and declaratory judgment claims "ancillary to a claim" under section 6419. MCL 600.6419a. That jurisdiction "is not intended to be exclusive of the jurisdiction of the circuit court over demands for declaratory and equitable relief conferred by section 605 [MCL 600.605]." *Id.*

The only way to harmonize these two sections is to read the terms "claims and demands" in section 6419(1) as limited to claims and demands that do not include equitable and declaratory relief. Otherwise, (1) the reservation of circuit court equitable and declaratory jurisdiction in sections 6419(4) and 6419a would conflict with 6419(1); and (2) section 6419a would be a meaningless "addition" to section 6419.

Thus we must conclude that jurisdiction under section 6419 is limited to claims and demands that do not include equitable or declaratory relief—claims for money damages. It follows that a claim for purely declaratory relief—without any claim for money damages—such as the claim in this case, is not within the court of claims' exclusive jurisdiction under section 6419 (because it is not a claim for money damages)

and is not within the court of claims' jurisdiction under section 6419a (because it is not ancillary to a claim for money damages). Since the claim is not within the court of claims' jurisdiction, it is within the general jurisdiction of the circuit court. MCL 600.605.

This reading of the statutes is consistent with this Court's decision in *Silverman v University of Michigan,* 445 Mich 209, 217, 516 NW2d 54, 58 (1994), which stated: "A complaint seeking only equitable or declaratory relief must be filed in circuit court." The court of appeals followed and applied *Silverman* in this case. Appendix at 105a-106a (quoting *Silverman*).

Appellant Michigan State Housing Development Authority (MSHDA) argues for a broad reading of section 6419, claiming that it confers exclusive court of claims jurisdiction over all claims regardless of the type of relief sought. That reading, however, leaves nothing within the scope of the additional jurisdiction conferred by section 6419a. And it would divest the circuit courts of the equitable and declaratory jurisdiction that both section 6419(4) and section 6419a expressly preserve. MSHDA's reading renders section 6419a a nullity. The only reading that harmonizes both sections is one that limits section 6419 to money damage claims.

Applying this conclusion to Parkwood's claim requires affirmance of the court of appeals. Parkwood's claim is solely for declaratory relief. It does not ask for money damages. It asks for a ruling as to what will be done with certain escrow accounts MSHDA holds *if* Parkwood prepays its mortgage loan. This is not a claim for money damages. The court of appeals was correct in concluding that the claim belongs in the circuit court, not the court of claims. This Court should thus affirm.

Counter-Statement of Facts

MSHDA's statement of facts is generally accurate, except for the points noted here. MSHDA sets out general facts regarding MSHDA's purpose and the general nature of its programs. MSHDA brief, pp 4-5. These recitations are irrelevant to the subject matter jurisdiction issue before the Court and, in some instances, are inaccurate. For example, the claim that developers could finance housing projects "with minimal cash investment" (*id.,* p 5) is incorrect. Parkwood's owners invested substantial funds in their project.

We will not, however, rebut such factual misstatements with record citations, since they are simply not relevant to the question of which trial court has jurisdiction over Parkwood's claim. The relevant facts for that issue are as follows: Parkwood obtained a $4,308,890 mortgage loan from MSHDA. Appendix at 29a, 54a (mortgages). Under the terms of a related regulatory agreement (appendix at 38a), Parkwood deposits funds with MSHDA that MSHDA holds in various escrow and reserve accounts. Appendix at 39a, ¶ 3 (replacement reserve); 40a, ¶ 4 (operating reserve); 48a, ¶ 22 (development cost escrow). Parkwood inquired about prepaying the mortgage loan. Appendix at 63a. MSHDA claims the right to retain money in three escrow and reserve accounts if Parkwood prepays the loan. Appendix at 1b (MSHDA letter stating that accounts "will be retained by the Authority); 2b (MSHDA activity statement showing principal and escrow balances)[1]; 65a, ¶ 9 (balance of $1,462,426.87

[1] The disputed accounts are the replacement reserve ("R.R."), operating reserve ("ORC"), and development cost escrow interest ("DCE I"). Appendix at 1b ("All sums remaining in the DCE interest, the replacement reserve, and the ORC accounts . . . will be retained by the Authority.").

in disputed accounts on September 30, 1998); 77a, ¶ 9 (balance of $1,411,107.62 on December 31, 1998). Parkwood thus sought a declaratory judgment that it was entitled to the funds if it prepaid the mortgage. Appendix at 64a (complaint in Wayne Circuit Court); 76a (first amended complaint in court of claims).

MSHDA's statement of the proceedings is accurate, with one clarification. MSHDA notes that Parkwood—which now challenges the court of claims' subject matter jurisdiction—did not raise the question of subject matter jurisdiction in that court. Parkwood filed its complaint in the court of claims—after the circuit court dismissed the same complaint—to preserve its rights in case the appeal of the circuit court dismissal was not successful. There was no way for Parkwood to raise the subject matter jurisdiction question in the court of claims while also invoking that court's jurisdiction as a protective measure. In any event, MSHDA does not contest the principles that parties cannot confer jurisdiction by consent, a judgment rendered without subject matter jurisdiction is void, and a party can raise lack of subject matter jurisdiction at any stage, even on appeal. MCR 2.116(D)(3); *In re Hatcher,* 443 Mich 426, 438, 505 NW2d 834, 840 (1993); *Bass v Combs,* 238 Mich App 16, 23, 604 NW2d 727, 731 (1999). Thus the fact that Parkwood did not challenge the court of claims' jurisdiction until the case was in the court of appeals is of no moment.

Argument

I. Standard of Review

Subject matter jurisdiction is a question of law that the court reviews *de novo*. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Board,* 240 Mich App 153, 160, 610 NW2d 613, 618 (2000); *Specht v Citizens Ins Co,* 234 Mich App 292, 294, 593 NW2d 670, 671 (1999).

The jurisdictional question also involves construction of the court of claims act, MCL 600.6419(1) and 600.6419a. The Court reviews questions of statutory construction *de novo*. *Smith v Globe Life Ins Co,* 460 Mich 446, 458, 597 NW2d 28, 34 (1999); *Omne Financial, Inc v Shacks, Inc,* 460 Mich 305, 311, 596 NW2d 591, 594 (1999).

II. The Court of Claims Act Does Not Provide For Jurisdiction Over a Complaint Against a State Agency Seeking Only a Declaratory Judgment Without a Claim for Money Damages

A. The Two Relevant Sections Can Only Be Harmonized By Holding That the Court of Claims Does Not Have Jurisdiction Over a Pure Declaratory Action Against a State Agency

1. The Relevant Sections and Their History

The court of claims is a statutory court of limited jurisdiction for claims against the state and its agencies. For the dispute in this case, two sections of the court of claims act define the court's jurisdiction:

> (1) Power and jurisdiction. Except as provided in sections 6419a and 6440,[2] the jurisdiction of the court of claims, as conferred upon it by this chapter, shall be exclusive. . . . The court has power and jurisdiction:
>
> (a) To hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms, or agencies.

MCL 600.6419. This is the original grant of jurisdiction to the court of claims. Subsection (1)(a) was enacted in 1939 and has remained unchanged since then. 1939 PA 135, § 8(1).

A 1984 amendment added the other relevant section. 1984 PA 212. It provides:

> In addition to the powers and jurisdiction conferred upon the court of claims by section 6419, the court of claims has concurrent jurisdiction of any demand for equitable relief and any demand for a declaratory judgment when ancillary to a claim filed pursuant to section 6419. The jurisdiction conferred by this section is not intended to be exclusive of the jurisdiction of the circuit court over demands for declaratory and equitable relief conferred by section 605.

MCL 600.6419a. The act that added this section also amended section 6419 in two relevant respects. First it added the cross reference in 6419(1) to this section ("Except as provided in sections 6419a . . . ."). Second, it added language to 6419(4) expressly preserving jurisdiction in the circuit court over "proceedings for declaratory or equitable relief."

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[2] MCL 600.6440 provides that the court of claims may not exercise jurisdiction over claims for which there is an adequate remedy in federal court. That section is not at issue in this case.

2. The Two Sections Must Be Read Together and Harmonized

The main rule of statutory construction that applies here is the requirement that separate parts of the same act must be read together and construed as a harmonious whole to give effect to all provisions of each section.

This requirement stems from the principle that "every word should be given meaning" and the Court must "avoid a construction that would render any part of the statute surplusage or nugatory." *Omelenchuk v Warren,* 466 Mich 524, 528, 647 NW2d 493, 496 (2002). *Accord, Koontz v Ameritech Services, Inc,* 466 Mich 304, 312, 645 NW2d 34, 39 (2002) ("Courts must give effect to every word, phrase, and clause in a statute . . . ."); *Robertson v DaimlerChrysler Corp,* 465 Mich 732, 748, 641 NW2d 567, 576 (2002) ("it is important to ensure that words in a statute not be ignored, treated as surplusage, or rendered nugatory"); *Pohutski v Allen Park,* 465 Mich 675, 684, 641 NW2d 219, 226 (2002).

> In the effort to give every word of a statute meaning—
>
> provisions of a statute that could be in conflict must, if possible, be read harmoniously.
>
> * * *
>
> In such a case of tension, or even conflict, between sections of a statute, it is our duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them.

Nowell v Titan Ins Co, 466 Mich 478, 482, 483, 648 NW2d 157, 160 (2002). "[T]he entire act must be read to be an harmonious and consistent enactment as a whole." *Drouillard v Stroh Brewery Co,* 449 Mich 293, 303, 536 NW2d 530, 535 (1995). *Accord, Gebhardt v O'Rourke,* 444 Mich 535, 542, 510 NW2d 900, 903 (1994) ("separate

provisions of a statute, where possible, should be read as being a consistent whole, with effect given to each provision").

3. The Only Reasonable Reading of the Two Sections Together Compels a Conclusion That the Court of Claims Does Not Have Jurisdiction Over a Pure Declaratory Action

Reading sections 6419 and 6419a together requires the conclusion that the court of claims has only limited equitable and declaratory judgment jurisdiction.

a. The Language of Section 6419a Shows That the Equitable and Declaratory Jurisdiction It Confers Is Something Different From the General Grant of Jurisdiction in Section 6419

Section 6419a confers limited equitable and declaratory judgment jurisdiction. There are two indications in the language of section 6419a that this is the *only* equitable and declaratory jurisdiction the court of claims has.

First, the jurisdiction is "[i]n addition to the powers and jurisdiction conferred upon the court of claims by section 6419." If the equitable and declaratory jurisdiction under section 6419a is "in addition to" the jurisdiction under section 6419, it follows that section 6419 does not confer equitable and declaratory jurisdiction. The phrase "[i]n addition to" in section 6419a must be given meaning. "When parsing a statute, we presume every word is used for a purpose. As far as possible, we give effect to every clause and sentence." *Pohutski,* 465 Mich at 684, 641 NW2d at 226. The only reasonable way to give this phrase meaning is to read the jurisdiction conferred under section 6419a as something different from the jurisdiction under 6419. This leads to the conclusion that section 6419 does not include equitable and declaratory jurisdiction.

Second, the equitable and declaratory jurisdiction under section 6419a applies "when ancillary to a claim filed pursuant to section 6419." A claim is "ancillary" when it is "supplementary" or "subordinate" to another claim. Black's Law Dictionary at 85 (7th ed 1999). *Accord,* Webster's Third New International Dictionary, Unabridged Edition (Merriam-Webster 1993), p 80 ("subordinate, subsidiary . . . auxilliary . . . related . . . supplementary"). Thus equitable and declaratory claims under section 6419a must supplement or be subordinate to claims under section 6419. It follows that section 6419 does not include equitable and declaratory claims. If it did, they would *be* claims under section 6419 and could not be supplemental or subordinate to claims under 6419.

Thus analysis of the language of section 6419a leads to the conclusion that the equitable and declaratory jurisdiction under 6419a is not within the jurisdiction conferred by section 6419. It logically follows that section 6419 does not include equitable and declaratory relief.

b. To Be Construed in Harmony with Section 6419a, Section 6419 Must Be Read As Limited to Claims for Money Damages

The conclusion above that section 6419 does not include equitable and declaratory relief might at first blush seem inconsistent with the language of that section, which includes "all claims and demands, liquidated and unliquidated, ex contractu and ex delicto." MCL 600.6419(1)(a). MSHDA's main argument is that that language includes all claims, regardless of whether they involve equitable or declaratory relief. But such a broad reading of section 6419 would be inconsistent with the language of section 6419a as analyzed above.

This seeming inconsistency "should be reconciled if possible." *Kokx v Bylenga,* 241 Mich App 655, 662, 617 NW2d 368, 372 (2000). The only reasonable way to reconcile this with section 6419a is to read "claims and demands" in section 6419 as limited to claims and demands for money damages. For several reasons, this is a reasonable reading, given the context.

(i) A More Limited Meaning to "Claims and Demands" Is Necessary to Harmonize the Two Sections

The principle of construing all sections together and giving effect to each (section II.A.2 above) requires reading section 6419 narrowly. It is necessary to give a more limited meaning to "claims and demands" in order to harmonize the two sections. "[T]he entire act must be read to be an harmonious and consistent enactment as a whole." *Drouillard,* 449 Mich at 303, 536 NW2d at 535. To "give effect to every word, phrase, and clause" (*Koontz,* 466 Mich at 312, 645 NW2d at 39), "claims and demands" under section 6419 cannot include the additional equitable and declaratory jurisdiction conferred in section 6419a. That is the only reasonable way to read both sections in context and give meaning to both.

MSHDA's reading of section 6419 as including all claims for equitable and declaratory relief renders section 6419a a nullity. If, as MSHDA argues, section 6419 already includes equitable and declaratory claims, it would have been unnecessary to enact section 6419a to confer equitable and declaratory jurisdiction "[i]n addition to" the jurisdiction under section 6419. A court must "take care not to render any portions of the statute meaningless because we cannot assume 'that the Legislature intended to do a useless thing.'" *People v Pfaffle,* 246 Mich App 282, 296, 632 NW2d 162, 170 (2001).

Giving a limited meaning to "claims and demands" also harmonizes section 6419(1) with the 1984 amendment to 6419(4). That amendment added an express reference to equitable and declaratory relief, so that subsection (4) now states: "This chapter shall not deprive the circuit court of this state of jurisdiction over. . . proceedings for declaratory or equitable relief . . . ." If section 6419(1)(a) included all claims for equitable and declaratory relief against the state within the exclusive jurisdiction of the court of claims, then there would be no reason for this amendment to subsection (4). The only way to read these two subsections in harmony is to accord a more limited meaning to "claims and demands" under section 6419(1).

(ii) The Specific Language of Section 6419a Takes Precedence Over the More General Language of Section 6419

The specific language of section 6419a should take precedence over the more general language of section 6419. *Jones v Enertel, Inc,* 467 Mich 266, 270, 650 NW2d 334, 337 (2002); *Gebhardt,* 444 Mich at 542, 510 NW2d at 903.

> Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision.

Evanston YMCA Camp v State Tax Comm'n, 369 Mich 1, 8, 118 NW2d 818, 821 (1962). *Accord, William's Delight Corp v Harris,* 87 Mich App 202, 208, 273 NW2d 911, 914 (1979).

That is precisely the situation here. Read "in its most comprehensive sense," section 6419 would include equitable and declaratory relief. But that "would include

matters embraced in" section 6419a. Thus section 6419 "must be taken to affect only such cases within its general language as are not with the provision of" section 6419a. The specific language of section 6419a—defining equitable and declaratory jurisdiction as something *not* contained in the general grant of jurisdiction in section 6419—must "prevail over any arguable inconsistency with the more general" language of section 6419. *Jones,* 467 Mich at 271, 650 NW2d at 337.

The rule that the specific governs the general applies with even more force where, as here, the specific enactment amends the general one. "[A] more specific subsequent enactment of the Legislature is controlling to the extent of any inconsistencies with a prior more general statement." *Martin v Stine,* 214 Mich App 403, 411, 542 NW2d 884, 887 (1996) (statute for general review of administrative decisions did not apply because later statute expressly limited right to review minor misconduct decisions against prisoners). *Accord, Manville v Board of Governors,* 85 Mich App 628, 636, 272 NW2d 162, 166 (1978).

Here, in 1984, the legislature added section 6419a and added a cross-reference to 6419a in 6419. The more specific amendment supersedes the more general prior language.

(iii) Section 6419 Is Limited to Money Damages Because the 1984 Amendment Adding Section 6419a Added Jurisdiction

"[A]n amendment is generally construed as changing the meaning of a statute." *Brown v Shell Oil Co,* 128 Mich App 111, 114, 339 NW2d 709, 711 (1983). *Accord, English v Saginaw County Treasurer,* 81 Mich App 626, 631, 265 NW2d 775, 777 (1978). This principle weighs in favor of reading the 1984 amendment adding section

6419a to the court of claims act as an amendment that added equitable and declaratory jurisdiction rather than one that merely restated jurisdiction already contained in section 6419. Reading section 6419a as adding jurisdiction would construe it as "as changing the meaning of [the] statute." *Brown,* 128 Mich App at 114, 339 NW2d at 711.

The Court should also examine the amendment in light of the court decisions about court of claims jurisdiction preceding it. *Brown,* 128 Mich App at 115, 339 NW2d at 711 ("Amended statutes should be interpreted in light of court decisions which prompted the amendment"). This Court examined the background underlying enactment of section 6419a in *Silverman v University of Michigan,* 445 Mich 209, 516 NW2d 54 (1994). The Court said: "Before 1984, Michigan appellate courts struggled to resolve whether the Court of Claims could render a declaratory judgment or grant other relief that was ancillary to a claim against the state for money damages." 445 Mich at 213-214, 516 NW2d at 56. As an example, the Court cited *Taylor v Auditor General,* 360 Mich 146, 103 NW2d 769 (1960). That case held that the court of claims had no "equity side" and could not render a declaratory judgment. 360 Mich at 151, 103 NW2d at 771. *Accord, In re Request for Advisory Opinion,* 400 Mich 311, 320, 254 NW2d 544, 547 (1977); *Crider v State,* 110 Mich App 702, 712-713, 313 NW2d 367, 372-373 (1981); *Dorfman v Department of State Highways,* 66 Mich App 1, 3, 238 NW2d 395, 396 (1976); *Blue Water Excavating Co v State,* 4 Mich App 266, 271-272, 144 NW2d 630, 633 (1966) (following *Taylor* notwithstanding merger of law and equity).

The Court also cited the splintered opinions in *Greenfield Constr Co v Michigan Dept of State Highways,* 402 Mich 172, 261 NW2d 718 (1978). There, three justices said the court of claims could render a declaratory judgment, one disagreed, and two

declined to address the question.[3] 402 Mich at 198 n10, 261 NW2d at 726 n10 (lead opinion declining to address question); 402 Mich at 200, 261 NW2d at 727 (Coleman, J, concurring; court of claims can enter declaratory judgment); 402 Mich at 203, 261 NW2d at 728 (Levin, J, concurring in part, writing for two justices; court of claims can enter declaratory judgment); 402 Mich at 231, 261 NW2d at 742 (Williams, J, disagreeing with Levin). Since there was no majority on this point, the case had no precedential value. *Adrian v Michigan,* 420 Mich 554, 557 n5, 362 NW2d 708, 710 n5 (1984). The previous cases, holding that the court of claims had no declaratory judgment jurisdiction, thus remained controlling law.[4]

After noting these previous opinions on court of claims jurisdiction, the *Silverman* opinion then concluded: "To end the uncertainty created by inconsistent decisions on that procedural point, the Legislature enacted 1984 PA 212, which also added MCL 600.6419a; MSA 27A.6419(1)." 445 Mich at 214, 516 NW2d at 56. The amendment thus must be viewed in light of the virtually unanimous precedent holding that the court of claims did not have equitable or declaratory jurisdiction and the split opinions in *Greenfield* suggesting those cases might not be correct. The amendment reaffirmed the majority case law (that section 6419 does not confer general equitable and

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[3] A seventh justice did not participate.

[4] *Grunow v Sanders,* 84 Mich App 578, 269 NW2d 683 (1978), was an exception. It viewed *Greenfield* as repudiating *Taylor.* This is clearly wrong, since *Greenfield* expressly declined to decide whether the court of claims had declaratory judgment jurisdiction, a decision this Court reaffirmed in *Adrian v Michigan,* 420 Mich 554, 557 n5, 362 NW2d 708, 710 n5 (1984). A later court of appeals panel rejected the conclusion in *Grunow,* saying "that case does not reverse the established rule prohibiting the Court of Claims from exercising equitable jurisdiction." *Crider v State,* 110 Mich App 702, 714, 313 NW2d 367, 373 (1981).

declaratory jurisdiction) and then added limited equitable and declaratory jurisdiction in 6419a.

Reading section 6419a "in light of court decisions which prompted the amendment" (*Brown,* 128 Mich App at 115, 339 NW2d at 711) leads to the conclusion that section 6419a is a limited addition to the court of claims' jurisdiction. Had the legislature believed that section 6419 already covered all claims for equitable and declaratory relief, the limited language of 6419a would be unnecessary. Had the legislature intended only to clarify already-existing jurisdiction, it could have simply amended section 6419 and added "equitable and declaratory" to the list of types of claims covered. The fact that it chose more limited language means it intended a more limited definition of jurisdiction. Against the backdrop of cases holding that the court of claims had no equitable or declaratory jurisdiction, this compels a conclusion that the legislature intended the amendment to add only limited equitable and declaratory jurisdiction where there was none in section 6419 before the amendment. Thus, both before and after the amendment, section 6419 did not include equitable and declaratory jurisdiction.

(iv) Context Requires Using a More Limited Definition of "Claims"

The terms "claims" and "demands" have several dictionary definitions. These include definitions limited to money damages as well as the broader definitions MSHDA cites. In fact, MSHDA itself cites a definition with a limited meaning. MSHDA brief, p 12 (definition of "claim" including "[d]emand for money"). This is in accord with other dictionary definitions including, among the broader definitions, definitions limited to

money damage claims. "Claim" is defined as "A demand for money or property to which one asserts a right" (Black's Law Dictionary (7th ed 1999), p 240, definition 3) and "a demand for compensation, benefits, or payment." Webster's Third New International Dictionary, Unabridged Edition (Merriam-Webster 1993), p 414, definition 1b. "Demand" is defined as "the right or seeking for what is due or claimed as due." *Id.*, p 598, definition 1b(1).

"[B]ecause even the most common word can have a number of meanings, a court must also consider the context in which it appears in order to determine which of these ordinary meanings it carries in the statute under scrutiny." *Bio-Magnetic Resonance, Inc v Department of Public Health,* 234 Mich App 225, 230, 593 NW2d 641, 644 (1999). *Accord, Department of State v Michigan Educ Assn-NEA,* 251 Mich App 110, 119, 650 NW2d 120, 126 (2002). "[T]he interpretation to be given to a particular word in one section [is] arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole." *Macomb County Prosecuting Attorney v Murphy,* 464 Mich 149, 160, 627 NW2d 247, 253 (2001).

The context of the phrase "claims and demands" is in a section granting jurisdiction different from the equitable and declaratory jurisdiction granted in the following section. Choosing the more limited definition of "claims and demands" results in a "harmonious and consistent" reading of the statute.

(v) The Court of Claims Act Must Be Construed Narrowly

Finally, to the extent there is any doubt, the court of claims act must be construed narrowly because it is a waiver of the state's sovereign immunity from suit. In

Greenfield Constr Co v Michigan Dept of State Highways, 402 Mich 172, 261 NW2d 718 (1978), this Court said "the Court of Claims Act stands as this state's controlling legislative expression of waiver of the state's sovereign immunity from direct action against it and its agencies . . . ." 402 Mich at 195, 261 NW2d at 724 (plurality opinion). The waiver of immunity from suit in the court of claims act "must be strictly construed." *Id.,* 402 Mich at 197, 261 NW2d at 725. *Accord, Pohutski,* 465 Mich at 681, 641 NW2d at 225.

(vi) Statutory Analysis—Conclusion

The only reasonable way to harmonize both sections and give effect to all their provisions is to read "claims and demands" in section 6419 as limited to claims and demands that do not include equitable and declaratory relief. This is also consistent with the other statutory construction principles cited above.

Thus we must conclude that jurisdiction under section 6419 is limited to claims and demands that do not include equitable or declaratory relief—claims for money damages. It follows that a claim for purely declaratory relief—without any claim for money damages—is not within the court of claims' exclusive jurisdiction under section 6419 (because it is not a claim for money damages) and is not within the court of claims' jurisdiction under section 6419a (because it is not ancillary to a claim for money damages).

B. MSHDA's Plain Reading Argument Makes Section 6419a Meaningless

MSHDA's main argument focuses on the language of section 6419 without acknowledging the amendment adding section 6419a. MSHDA brief, pp 10-16. If

section 6419 were the only relevant section, that analysis might be persuasive. Section 6419 can be read broadly to include all claims without any exception. But section 6419 does not stand alone. It expressly refers to section 6419a. It must be construed together with and harmonized with section 6419a.

MSHDA relies on a "plain meaning" argument. But it cannot use "plain meaning" to divorce the words of the statute from their overall context. "[T]he meaning of statutory language, plain or not, depends on context." *People v Rutledge,* 250 Mich App 1, 6, 645 NW2d 333, 337 (2002). In construing a statute, the Court must "consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.'" *Sun Valley Foods Co v Ward,* 460 Mich 230, 237, 596 NW2d 119, 123 (1999). Thus, when MSHDA asks the Court to read "claims and demands" broadly to include claims for equitable and declaratory relief, it fails to consider the context of the phrase. It is part of a general definition of jurisdiction (in section 6419), followed immediately by a more specific definition of jurisdiction (in section 6419a) that includes equitable and declaratory relief "[i]n addition to" the "claims and demands" under section 6419. The only way to read both sections in harmony—and to give effect to section 6419a—is to read 6419 as covering only money damage claims, not equitable and declaratory relief.

This Court recently rejected just the type of argument that MSHDA makes here. In *Jones v Enertel, Inc,* 467 Mich 266, 650 NW2d 334 (2002), a city argued it was entitled to an "open and obvious" defense in a sidewalk defect case. The city relied on a section of the governmental tort liability act that says claims under the act "are subject to all of the defenses available to claims sounding in tort brought against private

persons." 467 Mich at 270, 650 NW2d at 337, citing MCL 691.1412. The Court rejected the argument because that section could not be "read in isolation" to supersede the more specific provision imposing a duty on municipalities to keep sidewalks in good repair. The Court said:

> Assuming for purposes of discussion that MCL 691.1412 read in isolation would allow South Lyon to use the open and obvious doctrine as a defense in the present case, we conclude that MCL 691.1412 would have to yield to the more specific statutory duty to maintain highways in reasonable repair under MCL 691.1402(1). "[W]here a statute contains a general provision and a specific provision, the specific provision controls." *Gebhardt v O'Rourke,* 444 Mich 535, 542-543; 510 NW2d 900 (1994).

467 Mich at 270, 650 NW2d at 337.

The court of appeals also rejected this kind of argument in *Tennille v Action Distributing Co,* 225 Mich App 66, 570 NW2d 130 (1997). There the court looked at the section of the dramshop act that creates a cause of action against a "licensee." Although the language in that section is unqualified, the court concluded that it covers only retail, not wholesale, licensees. It came to this conclusion by reading the particular section in the context of all the provisions of the act, which includes prohibitions on "retail licensees" that are the basis for a dramshop claim under the contested section. The court rejected the defendant's argument that it should look only at one section and ignore its context in the act as a whole. The defendant's error was "[r]efusing to view the dramshop act as a whole and looking at certain subsections in isolation." 225 Mich App at 71, 570 NW2d at 133.

Thus both this Court and the court of appeals reject precisely the kind of argument MSHDA makes here—an argument that one section of a statute, "read in isolation," compels a result at odds with another section. Just as the Court rejected that

kind of argument in *Jones,* it should reject the argument here that section 6419, "read in isolation," compels a conclusion that the court of claims has broad subject matter jurisdiction over all claims regardless of their nature when another, more specific, section—section 6419a—contains language contrary to that conclusion.

C. MSHDA's Other Arguments Are Not Persuasive

MSHDA criticizes the court of appeals for focusing on whether the complaints contained claims for "monetary damages," noting that the court of claims act does not use that term. MSHDA brief, p 14. MSHDA talks about the court of appeals opinion as though that court were inventing an extra-statutory requirement for court of claims jurisdiction. In fact, the court of appeals simply followed this Court's decision in *Silverman,* which draws the distinction between a pure declaratory judgment action and a claim for money damages. 445 Mich at 217, 516 NW2d at 58. (See our discussion of that holding in the next section of this brief.) In any event, looking at whether a complaint seeks money damages *is* consistent with the statutory language because, as we showed above, the term "claims and demands" in section 6419 must be read as limited to claims for money damages in order to give effect to all sections of the act and to construe them harmoniously.

MSHDA also makes what appears to be a policy argument that it should not be subjected to multiple suits in circuit courts across the state. MSHDA brief, p 16. A policy argument not rooted in the statutory language, however, is irrelevant when the Court can interpret the statutory language without reference to extrinsic considerations. In any event, there is no threat of other, multiple suits. MSHDA cites only one other suit. *Id.* That suit is in the court of claims, not the circuit court. *Id.* It has been stayed

pending the outcome of the appeal in this case. MSHDA's suggestion that it would be subjected to "multiple lawsuits in circuit courts around the state" (*id.*) is unsupported by any facts in the record or by any reasonable inference. Indeed, the fact that Parkwood has had to litigate this case for more than four years only to face an appeal in this Court that will decide only which court is proper would be a deterrent to anyone else who might think of suing in circuit court.

D. Discussion of *Silverman*

1. *Silverman* Correctly Held That a Claim Against a State Agency For Purely Declaratory Relief Is Within the Circuit Court's Jurisdiction

Analysis of the statutory language is sufficient to dispose of this case. When the Court can determine the meaning of the statute from its language, "[n]o further judicial construction is required or permitted." *Sun Valley Foods,* 460 Mich at 236, 596 NW2d at 123.

The Court, however, instructed the parties "to address the jurisdictional issue in the context of . . . this Court's decision in *Silverman v University of Michigan Board of Regents,* 445 Mich 209 (1994)." Order granting leave, 10/30/02 (appendix at 111a). Based on the analysis above, *Silverman* correctly held: "A complaint seeking only equitable or declaratory relief must be filed in circuit court." 445 Mich at 217, 516 NW2d at 58. That is because (1) the court of claims has no general equitable or declaratory jurisdiction under section 6419 and (2) the limited equitable and declaratory jurisdiction granted under section 6419a allows such claims *only* when they are "ancillary" to another claim otherwise within the court's jurisdiction. Since a complaint seeking only equitable or declaratory relief is not ancillary to another claim, it is not within the court of

claims' jurisdiction. Therefore it is within the circuit court's general jurisdiction under MCL 600.605.

2. Other Holdings of *Silverman*

The holding in *Silverman* discussed above is the only one relevant to this case since, as discussed below in section III, Parkwood's complaint seeks solely declaratory relief. *Silverman,* however, set out two other bright line rules that we discuss here for completeness.

First, *Silverman* held: "A complaint seeking only money damages against the state must be filed in the Court of Claims." 445 Mich at 217, 516 NW2d at 58. That has never been an issue. Even under the narrowest possible reading of section 6419, money damage claims are within the court of claims' exclusive jurisdiction.

Second, *Silverman* stated: "A complaint seeking money damages from the state as well as equitable or declaratory relief against the state may only be filed in the Court of Claims, because that is the sole forum that is capable of deciding the whole case." 445 Mich at 217, 516 NW2d at 58. This says that any claim that could fall within the ancillary equitable or declaratory jurisdiction of section 6419a must be filed in the court of claims and cannot be filed in the circuit court. That holding is not faithful to the statutory language. The limited equitable and declaratory jurisdiction that section 6419a confers "is not intended to be exclusive of the jurisdiction of the circuit court over demands for declaratory and equitable relief conferred by section 605 [MCL 600.605]." MCL 600.6419a. And the court of claims act "shall not deprive the circuit court of this state of jurisdiction over . . . proceedings for declaratory or equitable relief . . . ." MCL 600.6419(4).

Section 6419a clearly gives a litigant a choice: Join an ancillary equitable or declaratory claim with a money damage claim in the court of claims *or* bring the claim separately in the circuit court.[5] *Silverman* noted that the statutory language "would permit the interpretation . . . that the claim for equitable or declaratory relief could be filed in either the Court of Claims or circuit court." 445 Mich at 217 n8, 516 NW2d at 58 n8. But it rejected that interpretation "as unsound and contrary to the intent of the Legislature, because it would mean splitting a single suit between two forums." *Id.* This appears to be a decision based on policy rather than a clear statement of legislative intent in the statutory language. In the name of judicial efficiency, it imposes a limitation on circuit court jurisdiction contrary to the statutory language expressly preserving circuit court jurisdiction concurrent with the court of claims over ancillary equitable and declaratory claims.

Examination of this question, however, is unnecessary for disposition of this case. This case involves only one claim. As we show below in section III, it is a claim for a declaratory judgment. Even were the Court to accept MSHDA's argument that the complaint is one for money damages, it is still only a single claim, not one combining money damages and declaratory relief under the third prong of the *Silverman* formulation. Thus the Court need not reach this question to decide this case.

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[5] Rather than splitting claims between two courts, it might be prudent to join both claims in the court of claims, both for the sake of efficiency and to avoid the potential application of res judicata or collateral estoppel based on the case that goes to judgment first. But the statutory language does not mandate joinder in the court or claims and does not prohibit a separate filing in the circuit court.

3. MSHDA's Discussion of *Silverman*

Our discussion above addresses *Silverman's* jurisdictional holding. In responding to the Court's direction to address *Silverman,* MSHDA spends most of its time discussing a footnote addressing a different matter—the principle that a party cannot change the nature of a complaint by calling it something that it is not. 445 Mich at 216 n7, 516 NW2d at 57 n7 (discussed in MSHDA's brief, pp 19-22). As we discuss in section III.B below, that did not happen here. But, in any event, the Court directed the parties to discuss jurisdiction in the context of *Silverman*, not artful pleading. Only in the final paragraph of its discussion of *Silverman* does MSHDA address jurisdiction. MSHDA brief, p 24. There it asks the Court to overrule *Silverman's* holding that pure declaratory judgment actions belong in circuit court. It relies on the plain language argument that we refute in section II.B above. MSHDA has shown no basis for overruling *Silverman*.

III. The Claim Here Is for a Declaratory Judgment Without Money Damages. The Circuit Court, Not the Court of Claims, Has Jurisdiction

Applying the conclusion from the statutory analysis above, the court of appeals correctly decided that this case belongs in the circuit court, not the court of claims, because the complaints both seek solely declaratory relief.

A. The Complaints Seek Only Declaratory Relief

Parkwood filed its complaint to seek guidance as to what would happen *if* it prepaid its mortgage. Both complaints recite Parkwood's inquiry to MSHDA about mortgage prepayment and MSHDA's response that it intended to retain certain reserve

and escrow accounts. Appendix at 67a, ¶¶ 13-14; 79a, ¶¶ 13-14. They go on to say that Parkwood needs a ruling on this question in order to decide whether to prepay the mortgage loan. Appendix at 67a, ¶ 17; 79a, ¶ 17. The prayer for relief is identical in both complaints:

> WHEREFORE, Plaintiff requests that the court adjudicate and declare that the accounts which are the subject of this complaint are assets belonging to Plaintiff, subject to Defendant's custodial rights while the mortgage is in force, and that Plaintiff shall be entitled to sole possession of the accounts at the time Plaintiff pays the full balance due under Defendant's mortgage. Plaintiff also requests its costs and attorney fees and such other relief as the court determines to be just.

Appendix at 68a, 80a[6]

This is a true declaratory judgment case—a case in which a party seeks guidance as to the legal effect of a contemplated, but not yet completed, course of action. The purpose of a declaratory judgment is "to guide a plaintiff's future conduct in order to preserve his legal rights." *Shavers v Kelley,* 402 Mich 554, 588, 267 NW2d 72, 82 (1978).

This case is not a suit for money damages, since it is unclear at this time when, if ever, Parkwood will prepay the mortgage. It is equally unclear at this time—and impossible to determine—what the balance in the reserve and escrow accounts would be if Parkwood prepaid the mortgage. There are deposits into the accounts every month and disbursements for project purposes on MSHDA's approval. *E.g.,* appendix

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[6] The references to the court of claims complaint are to the first amended complaint there. Appendix at 76a. The only difference from the original complaint (appendix at 71a) is that the first amended complaint was verified as required by MCL 600. 6434(2).

at 39a, ¶ 3 (provisions in regulatory agreement for monthly deposits into replacement reserve and disbursements for particular approved purposes); appendix at 2b (monthly statement of activity showing deposits into accounts). Thus the balance changes from month to month and there is no way, at this time, for a court to determine an amount for a money judgment, even if Parkwood were to seek such a judgment.

The court of appeals opinion recognized this. It quoted the rule in *Silverman* and then applied it to the two complaints here. Appendix at 106a. For the circuit court, it stated "plaintiff's complaint only sought a declaratory judgment regarding the substantive issue in dispute" and "plaintiff's complaint did not request monetary damages anywhere in its complaint." *Id.* Given that, it reached the proper conclusion that the circuit court was wrong in dismissing the complaint for lack of subject matter jurisdiction. *Id.*

For the court of claims complaint, the court of appeals held that "because plaintiff's complaint before the Court of Claims did not request monetary damages, the Court of Claims lacked subject matter jurisdiction to rule on the substantive merits of the issue." *Id.*

B. MSHDA Mischaracterizes the Complaints As Seeking Money Damages

MSHDA spends significant effort trying to characterize Parkwood's claims as money damage claims, which would be within the court of claims' exclusive jurisdiction. A reasonable reading of the complaints shows that they do not seek money damages.

The prayer for relief in each complaint is phrased *solely* as a request for a declaratory judgment. It asks the court to "*declare* . . . that Plaintiff shall be entitled to

sole possession of the accounts at the time Plaintiff pays the full balance due under Defendant's mortgage." Appendix at 68a, 80a (emphasis added). Parkwood has not paid off the mortgage and cannot determine whether it will until it knows the legal consequences. Prepayment of the mortgage is, as the court of appeals said, "a contingency that has yet to occur." Appendix at 106a.

If Parkwood is successful, there would not be a money judgment against MSHDA. There would simply be a declaration as to what would happen *if* Parkwood prepays the mortgage. Whether Parkwood actually prepays its mortgage in the future, even if it wins this case, is uncertain. It will depend on the availability of other financing, the possibility of a sale of the property, the tax consequences, and other financial considerations. A decision in Parkwood's favor would not change the status quo. It would have no consequences until and if Parkwood actually decides to prepay its mortgage.

Under those circumstances, is this a claim for "money damages"? A final judgment in this case would not order MSHDA to pay anything. A "money judgment" requires "the payment of a sum of money, as distinguished from an order directing an act to be done or property to be restored or transferred." *In re Forfeiture of $176,598,* 465 Mich 382, 386, 633 NW2d 367, 370 (2001). *Accord, Proudfoot v State Farm Mutual Ins Co,* __ Mich App __ (case no. 232282, January 10, 2003) [2003 WL 103268], slip opin at 4 ("a money judgment simply requires the immediate payment of a sum of money")[7]; *Stewart v Isbell,* 155 Mich App 65, 80, 399 NW2d 440, 446 (1986)

[7] The author of the *Proudfoot* opinion is the same judge who dissented in this case, asserting that the complaint was one for money damages. Her unpublished dissent in this case cites no authority. The published opinion in *Proudfoot* does.

(foreclosure judgment is not a money judgment); *Moore v Carney,* 84 Mich App 399, 404, 269 NW2d 614, 616 (1978) (judgment requiring purchase of dissenting shareholder's stock is not a money judgment). MSHDA cites nothing to the contrary. It simply proclaims, without citing any authority, that "a court's determination *(or declaration)* that money held by one party rightfully belongs to the other" involves a claim for money damages. MSHDA brief, p 21 (emphasis added). This ignores the concept of damages and eliminates the distinction between a declaratory judgment and a claim for damages.

The concept of "money damages" must include a person paying money out of the person's own pocket. *In re Forfeiture, supra; Proudfoot, supra; Stewart, supra; Moore, supra.* But this case is not a suit to compel MSHDA to pay *its* money—or any money—to Parkwood. It is a suit for a declaration that the money does not belong to MSHDA at all. MSHDA can only characterize this as a suit for money damages from MSHDA if one assumes that the disputed funds belong to MSHDA in the first place and the ultimate relief in the case will be an order for MSHDA to pay the money to Parkwood. That would assume the answer to the central dispute in this case. But MSHDA admits that the funds do not currently belong to it and claims only that they will "vest" in MSHDA on "termination of Parkwood's relationship with MSHDA by payment of the loan." Appendix at 4b (MSHDA's Brief in Opposition to Parkwood's Motion for Summary Disposition, 7/17/00, p 3). That is consistent with the common understanding of an escrow account—an account where another party holds someone's money. The escrow holder is not the owner of the money. Given the fact that the money currently belongs to Parkwood, this cannot be a suit for MSHDA to pay money damages: The

result if Parkwood is successful is not that MSHDA would pay MSHDA funds to Parkwood. It would be that the Court declares that the disputed funds do not "vest" in MSHDA if Parkwood prepays its mortgage. It would affirm that the funds are and remain Parkwood's.

MSHDA tries to make much of the fact that Parkwood's circuit court complaint stated Parkwood wanted to use the funds to pay part of its loan if it decided to prepay. Appendix at 67a, ¶ 17.[8] That does not change the analysis. The prayer for relief makes clear what Parkwood wants. It seeks a declaration that the funds belong to Parkwood "subject to [MSHDA's] custodial rights while the mortgage is in force" and that Parkwood is entitled to receive the funds "at the time [Parkwood] pays the full balance due under Defendant's mortgage." Appendix at 68a (prayer for relief). It is clear that Parkwood does not seek control of the funds before it pays the mortgage loan and is not seeking an order that MSHDA pay the funds or do anything with the funds before Parkwood actually pays off the full loan balance. The regulatory agreement (appendix at 38a *et seq.*) governs the funds until that time.

The suggestion of crediting the funds against the loan balance *when Parkwood prepays the loan* is simply a convenience to avoid transferring different funds back and forth. The loan balance exceeds the reserve and escrow balances by millions of dollars. Appendix 1b (MSHDA payoff letter showing balance of $3,420,036); 2b (activity statement showing escrow balances). Parkwood would prepay the loan by refinancing

[8] The court of claims complaint does not contain this allegation. Appendix at 79a, ¶ 17.

or selling the property and applying part of the new loan or sale proceeds to the mortgage debt. At the moment it prepays the loan, Parkwood becomes entitled to the escrow and reserve funds without restriction. It could either (1) use new mortgage proceeds or sale proceeds to pay the balance on the MSHDA loan and then obtain the escrow and reserve funds for other use or (2) let MSHDA keep the escrow and reserve funds as a credit against the loan balance and pay MSHDA an additional amount that is correspondingly less. In the second case, Parkwood would have the benefit of additional sale or new loan proceeds equal to the amount of the escrow and reserve funds. The only difference between these two situations is this: In the first, Parkwood pays MSHDA the entire loan balance and MSHDA in turn pays Parkwood the amount in the escrow and reserve accounts. In the second, Parkwood simply pays MSHDA the net amount—the difference between the total loan balance and the reserve and escrow balance. The second case is simply a more convenient way of proceeding since it involves only one payment between the parties rather than two. It is a simultaneous transaction that is a regular practice when a mortgagee holds funds from the mortgagor in escrow. In either case, the financial result is the same. In either case, Parkwood obtains control over the disposition of the escrow and reserve funds *only* simultaneously with its prepayment of the loan. Parkwood is not seeking (and the complaints do not ask) to receive the funds before Parkwood prepays the loan.

The fact that Parkwood mentioned this second possibility in its circuit court complaint is irrelevant to the analysis. The fact remains that Parkwood has not decided whether to prepay its loan and neither complaint asks or requires MSHDA to do

anything with the funds. Parkwood seeks only a declaration of what its rights would be in the future *if* it prepays the loan.

We have no quarrel with MSHDA's argument that a plaintiff cannot avoid court of claims jurisdiction by using "artful pleading" to try to characterize a money damage claim as one solely for declaratory relief. That is not what Parkwood did. Parkwood did not craft a complaint with the intention of choosing a forum. Parkwood's sole motivation was to file in the right court, so that any judgment would be conclusive. It filed virtually the same complaint in both courts. Appendix at 64a, 76a. A fair characterization of both complaints is that Parkwood seeks guidance as to the consequences of its potential future conduct: What will happen if it prepays its loan? This is a claim for declaratory relief, not one for money damages. It therefore belongs in the circuit court.

IV. The Declaratory Judgment Rule Does Not Change the Analysis

MSHDA argues that the declaratory judgment rule "confirms that the court of claims had jurisdiction." MSHDA brief, p 24. The rule says that, "[i]n a case of actual controversy within its jurisdiction" a Michigan court can enter a declaratory judgment. MCR 2.605(A)(1). "For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment." MCR 2.605(A)(2). MSHDA appears to argue that, since the court of claims would have jurisdiction over a claim for money damages related to the accounts in dispute in this case, this rule allows the court of claims to entertain a pure declaratory judgment claim about the same accounts.

The argument is wrong for two reasons. First, a court rule cannot define the court of claims' jurisdiction. Although the Supreme Court can define circuit court jurisdiction by rule in certain cases, Const 1963, art 6, § 13, there is no similar provision for the court of claims, which is a statutory court not mentioned in the constitution. The court of claims act is the only source of jurisdiction for the court of claims. Nothing in the act allows the Court to define the court of claims' jurisdiction by rule. MCL 600.6422, which states that "[p]ractice and procedure" in the court of claims is the same as in the circuit court, does not affect jurisdiction. By its express terms, it applies only to "[p]ractice and procedure."

MCR 2.001 recognizes the limited application of some court rules to courts of limited jurisdiction like the court of claims. It states that the Michigan Court Rules apply in all courts "except where the limited jurisdiction of a court makes a rule inherently inapplicable . . . ." Here, the limited jurisdiction of the court of claims makes MCR 2.605(A) inapplicable, since the court of claims has only limited declaratory judgment jurisdiction under section 6419a.

Second, even if the Supreme Court could define the court of claims' jurisdiction by rule, MCR 2.605(A) is not such a rule. "Because it is a general rule of civil procedure, the rule cannot confer jurisdiction." *Musselman v Governor,* 200 Mich App 656, 667-668, 505 NW2d 288, 293 (1993), *aff'd,* 448 Mich 503, 533 NW2d 237 (1995) and 450 Mich 574, 545 NW2d 346 (1996).

MSHDA cites *77th District Judge v State,* 175 Mich App 681, 438 NW2d 333 (1989), as support for its argument that the declaratory judgment rule somehow confers jurisdiction on the court of claims. That case is of no value. It contains no analysis of

the statutory language of the court of claims act. Rather it relies exclusively on Justice Levin's partial dissent in *Greenfield Constr Co v Michigan Dept of State Highways,* 402 Mich 172, 261 NW2d 718 (1978), an opinion in which only one other justice concurred. 175 Mich App at 699-700, 438 NW2d at 341. Our discussion of *Greenfield* above in section II.A.3.b.(iii) shows there was no majority opinion and it is not precedent for any proposition about court of claims jurisdiction.

Moreover, if one reads *77th District Judge* closely, it does not stand for anything other than the proposition that a declaratory action *joined with* a money damage claim is within the court of claims' jurisdiction—a straightforward application of MCL 600.6419a. The sentence in the opinion that MSHDA relies on says: "declaratory judgment is appropriate in the Court of Claims only if the underlying dispute or controversy is of a nature lending itself to an eventual remedy in money damages against the state or one of its branches." 175 Mich App at 700, 438 NW2d at 341. That language could be understood to say that a pure declaratory judgment action is within the court of claims' jurisdiction if, sometime in the future, there could be a money damage remedy based on the declaratory judgment. But, examined more closely, that is not what the case held. The sentence MSHDA relies on immediately follows quotation of a statement from Justice Levin's *Greenfield* opinion: "While an action for a declaratory judgment involving the state need not assert a claim or demand against it and if it does not it may, subject to other provisions of law, be brought in the circuit court, an action for a declaratory judgment asserting such a claim or demand is subject to the exclusive jurisdiction of the Court of Claims." 175 Mich App at 700, 438 NW2d at 341, quoting *Greenfield,* 402 Mich at 230, 261 NW2d at 741. This rather convoluted language says several things: First, it

distinguishes a "claim or demand" from "an action for a declaratory judgment." Thus it is consistent with our statutory analysis that concludes that "claim or demand" in MCL 600.6419(1) does not include a suit for a declaratory judgment. Thus Justice Levin used the phrase "claim or demand" to mean a claim for money damages. Second, it says "an action for a declaratory judgment" that does "not assert a claim or demand" is proper in circuit court. This is consistent with our statutory analysis that concludes that a pure declaratory action must be in circuit court. Finally, it says "an action for a declaratory judgment" that includes "a claim or demand" must be in the court of claims. This is consistent with our reading of MCL 600.6419(1)(a) (conferring jurisdiction over money damage "claims and demands") and 600.6419a (conferring jurisdiction over declaratory actions ancillary to claims under 6419).

The statement in *77th District Judge* directly following the quotation from Justice Levin's opinion attempts to paraphrase his statement, although perhaps inartfully. When the opinion says a declaratory judgment is appropriate in the court of claims "if the underlying dispute or controversy is of a nature lending itself to an eventual remedy in money damages," one can read it as saying that, as Justice Levin held, the request for a declaratory judgment must be joined with the request for "an eventual remedy in money damages." That is exactly how this Court understood *77th District Judge* when it cited it in *Silverman* for the proposition that "the Court of Claims lacks jurisdiction over a case that does not include a claim for money damages." 445 Mich at 215 n5, 516 NW2d at 57 n5.

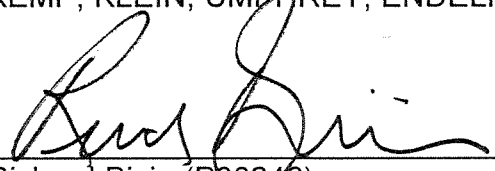
Neither the declaratory judgment rule nor *77th District Judge* supports MSHDA's arguments. Nor are they relevant to the proper statutory analysis, which must focus on the actual words of the court of claims act and interpreting both sections 6419 and 6419a together.

Relief Sought

Parkwood asks this Court to affirm the court of appeals.

However this Court rules on the jurisdictional question, it will then be time to address the merits of MSHDA's claim that it has authority to confiscate a borrower's reserve and escrow funds when the borrower prepays its mortgage. That question is ripe for decision, since there is a fully developed record and the parties extensively briefed and argued it in both the court of claims and the court of appeals. We explained in Parkwood's cross-application for leave to appeal that this question will ultimately reach this Court again because it involves over a million dollars for Parkwood and similar amounts for about 200 other borrowers. Further litigation in the lower courts will only delay a definitive resolution of this question. Parkwood has sought an answer to this question in the courts since 1998. Appendix at 64a (complaint filed December 11, 1998). After deciding the jurisdictional question, rather than remanding to a lower court, the Court should direct the parties to brief and argue the merits. MCR 7.316(A)(3) (Court may add new grounds of appeal); 7.316(A)(7) (Court may enter any order that a case may require). That will put this case on track for a prompt definitive resolution of this important public policy issue.

KEMP, KLEIN, UMPHREY, ENDELMAN & MAY, P.C.



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Dated: January 22, 2003
342568

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Cooper, PJ, and Sawyer and Owens, JJ

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.
_____/

Supreme Court No. 120410

Court of Appeals No. 218433

Wayne County Circuit Court
Case No. 98-839763-CK
Hon. Kathleen MacDonald

PARKWOOD LIMITED DIVIDEND HOUSING ASSOCIATION,

Plaintiff-Appellee,

v

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY,

Defendant-Appellant.
_____/

Supreme Court No. 120411

Court of Appeals No. 229448

Court of Claims
Case No. 99-17226-CM-C30
Hon. Lawrence Glazer

PROOF OF SERVICE

The undersigned hereby states that on this 24th day of January, 2003, a copy of Plaintiff-Appellee's Brief on Appeal, Appendix and this Proof of Service were served upon the following via First Class, U.S. Mail, postage prepaid:

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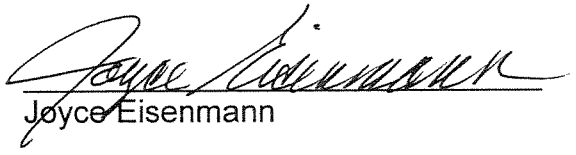

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